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January 18, 2002

The Honorable Kenneth Feinberg  
Special Master  
September 11<sup>th</sup> Victim Compensation Fund  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Mr. Feinberg:

I am writing on the Department of Justice's (DOJ) September 11<sup>th</sup> Victim Compensation Fund interim final rule published in the Federal Register December 21, 2001 (28 CFR Part 104).

Let me begin by commending you for accepting the challenging position of Special Master. I appreciate the work that you and the Department of Justice have accomplished with respect to this interim final rule to compensate the victims of the tragic September 11<sup>th</sup> attacks. No monetary sum could ever truly approximate full compensation for the loss of life or livelihood, a fact that makes this task ever more difficult. Nonetheless, Congressional action mandates that we come as close as possible to fairly compensating the victims and their loved ones for their damages and sustained losses. As you know, many of the victims of September 11<sup>th</sup> are concerned about the Victim's Compensation Plan interim final rule. My district was particularly affected because many of the World Trade Center victims were Boston area aircraft passengers. In this letter, I bring some of these concerns to your attention so that you may consider making appropriate adjustments to the published rules.

On September 22, 2001 the President signed into law the Air Transportation Safety and System Stabilization Act, which constituted a \$15 billion bail-out package in cash and loan guarantees for the airlines. In addition, the law capped the airlines' liability for the September 11<sup>th</sup> attacks with the effect of potentially depriving victims the opportunity to obtain full and fair compensation through litigation. Recognizing that victims' awards could be limited, Congress created the Victims Compensation Fund to provide a litigation alternative. Victims who elect compensation through the Fund relinquish their right to sue.

There are four areas of concern where modifications should be considered prior to the final rule's publication in early February in order to adequately compensate victims and loved ones. These include increasing non-economic compensatory damages, adjusting the formula for economic damages, clarifying the collateral offset rule, and refining the burden of proof required by beneficiaries who request a hearing to receive increased compensation.

As you know, the Fund provides for damages limited to \$250,000 per victim and \$50,000 for a spouse and each dependent. These awards are extremely low when compared to what most victims of airlines crashes or terrorism have won through the courts. It is common for juries to award sums to

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victims of such tragedies in excess of \$1 million. I ask that you reconsider the damages caps to ensure that they reflect the broad array of non-economic losses clearly outlined in the statute.

With respect to the formula used for calculating presumed economic damages, numerous experts have expressed the view that the methodology is flawed based on the use of outdated federal government data. If this criticism is accurate, I would ask that you reconsider this formula, or at a minimum, update the baseline data to more accurately reflect current incomes and pension requirements for claimants of the Fund.


Regarding collateral source payments, I am very pleased that charitable contributions are not a required offset for claimants of the Fund award. However, the required offsets for collateral source payments should take into account any tax liability incurred by a collateral source payment or any fee required to secure a collateral source payment.

Finally, I ask that you reconsider the high standard required by claimants to increase their presumed award. The Fund's hearings require that claimants demonstrate "extraordinary circumstances" in order to increase their award. This threshold appears to unjustifiably limit claimants from securing appropriate compensation. I ask that a more reasonable requirement be considered for adjustments in Fund awards.

The victims of this horrific tragedy from my district and from throughout the country were the first casualties in our nation's war against terrorism. The families of the victims now bear the enormous burden of healing and moving on with their lives. They are being promised full and fair compensation in exchange for waiving their right to sue for damages. The federal government has an obligation to keep its promise so that these remarkable Americans are not victimized again. I urge you to weigh carefully their legitimate concerns regarding the interim final rule.

I thank you for your consideration of these important issues.

Sincerely,

  
Edward J. Markey